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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
01 JAN 30 PM 3:27 HAMMOND DIVISION

STATE OF INDIANA, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA
Plaintiff,

v.

NATIONAL MAINTENANCE
PRODUCTS, INC., RELIABLE
MAINTENANCE, INC., LAURA G. PERRY,
and JAMES NICHOLS,

Defendants.

CASE NO. 2:99 CV 46 RL

FINAL JUDGMENT AND CONSENT DECREE

Plaintiff, the STATE OF INDIANA, by the Attorney General for Indiana, Jeffrey A. Modisett, has filed a Complaint for Injunctive and Other Relief against defendants NATIONAL MAINTENANCE PRODUCTS, INC., an Indiana corporation; RELIABLE MAINTENANCE, INC., an Indiana corporation; LAURA G. PERRY, individually and as an officer or manager of the corporation; and JAMES NICHOLS, individually and as an agent of the corporation, alleging violations of the Federal Trade Commission's Telemarketing Sales Rule ("FTC Telemarketing Rule" or "the Rule"), 16 C.F.R. §310, and the defendants have specifically denied said allegations. The parties have entered into this Final Judgment and Consent Decree for the purpose of resolving this matter pending in the United States District Court, Northern District, Hammond Division, Case No. 2:99 CV 46 RL. This Final Judgment and Consent Decree does not bind any other officers, boards, commissions, or agencies of the respective plaintiff state.

Plaintiff and defendants, by their respective counsel, have agreed to the entry of this Final Judgment and Consent Decree by the Court without trial or adjudication of any issue of fact or

law, and without admission of any of the violations of the FTC Telemarketing Sales Rule alleged in the complaint filed herein.

FINDINGS

1. This court has jurisdiction over the subject matter of the complaint filed herein and over the parties to this action pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 et seq., and the FTC Telemarketing Rule, 16 C.F.R. § 310, 28 U.S.C. §§ 1331, 1337(a).

2. The complaint filed herein states claims upon which relief may be granted against defendants under the FTC Telemarketing Rule.

3. Venue for this matter is proper in the Northern District of Indiana under 28 U.S.C. § 1391 and 15 U.S.C. § 6103(e) and defendants have transacted business in this district.

ORDER

NOW THEREFORE, for the purpose of effectuating this Final Judgment and Consent Decree, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I.

Nationwide FTC Telemarketing Rule Prohibition

Defendants, in connection with the telemarketing of nondurable office and cleaning supplies, or any other goods, are permanently restrained and enjoined on a nationwide basis, from violating the FTC Telemarketing Rule, including engaging in the following acts and practices:

- (a) misrepresenting, directly or by implication, the total costs to purchase, receive or use the offered goods, including, but not limited to, misrepresenting that the goods sent are promotional items or free samples, but subsequently sending the person, business, or organization to whom the call is placed an invoice reflecting that payment is due for the free sample or promotional item, in violation of

Sections 310.3(a)(2)(i) and 310.3(a)(2)(v) of the FTC Telemarketing Rule, 16 C.F.R §§ 310.3(a)(2)(i), 310.3(a)(2)(v);

- (b) misrepresenting, directly or by implication, the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer, including, but not limited to, misrepresenting that only sample or promotional items are to be sent to the person, business, or organization to whom the call is placed, but subsequently sending unordered products as well as placing unordered products on back order, in violation of Section 310.3(a)(2)(i) of the FTC Telemarketing Rule, 16 C.F.R. § 310.3(a)(2)(i);
- (c) misrepresenting, directly or by implication, any material aspect of the nature or terms of the defendants' refund, cancellation, exchange, or repurchase policies, in violation of Section 310.3(a)(2)(iv) of the FTC Telemarketing Rule, 16 C.F.R. § 310.3(a)(2)(iv);
- (d) misrepresenting, directly or by implication, defendants' affiliation with a third-party organization, including, but not limited to, misrepresenting that defendants are the regular supplier of the person, business or organization to whom the call is placed in violation of Section 310.3(a)(2)(vii) of the FTC Telemarketing Rule, 16 C.F.R. § 310.3(a)(2)(vii);
- (e) making false or misleading statements to induce the person, business, or organization to whom the call is placed to pay for defendants' supplies, including, but not limited to the following:
 - (1) misrepresenting that defendants are the regular supplier of the person, business or organization, or that the defendants have previously done business with the person, business, or organization called, in violation of Section 310.3(a)(4) of the FTC Telemarketing Rule, 16 C.F.R § 310.3(a)(4);
 - (2) misrepresenting directly or by implication that defendants are offering supplies at the regular price or at a reduced price, in violation of Section 310.3(a)(4) of the FTC Telemarketing Rule, 16 C.F.R § 310.3(a)(4);
 - (3) misrepresenting that the person, business or organization to whom the call is placed had ordered goods shipped and/or billed by defendants, in violation of Section 310.3(a)(4) of the FTC Telemarketing Rule, 16 C.F.R. § 310.3(a)(4); and
 - (4) misrepresenting that the person, business or organization to whom the call is placed has agreed to pay a certain price for goods shipped by defendants in violation of Section 310.3(a)(4) of the FTC Telemarketing Rule, 16 C.F.R. § 310.3(a)(4);

- (f) failing to disclose promptly and in a clear and conspicuous manner to the person, business or organization receiving the call the following information:
- (1) defendants' identity, including defendants' names and location, in violation of Section 310.4(d)(1) of the FTC Telemarketing Rule, 16 C.F.R. § 310.4(d)(1);
 - (2) that the purpose of the call is to sell defendants' goods, in violation of Section 310.4(d)(2) of the FTC Telemarketing Rule, 16 C.F.R. § 310.4(d)(2);
 - (3) the nature of the goods, including a complete and accurate description of the goods being sold, in violation of Section 310.4(d)(3) of the FTC Telemarketing Rule, 16 C.F.R. § 310.4(d)(3); and
 - (4) that there is no purchase or payment requirement for receipt of free samples or promotional items, in violation of Section 310.4(d)(4) of the FTC Telemarketing Rule, 16 C.F.R. § 310.4(d)(4);
- (g) engaging in abusive conduct, including, but not limited to, the use of threats, intimidation, and profane or obscene language as a measure to handle customer complaints or requests for refunds in violation of Section 310.4(a)(1) of the FTC Telemarketing Rule, 16 C.F.R. § 310.4(a)(1); and
- (h) providing substantial assistance or support to any seller or telemarketer when the defendants know or consciously avoid knowing that the seller or telemarketer is engaged in activities which violate Sections 310.3(a) or (c), or Section 310.4 of the FTC Telemarketing Rule, 16 C.F.R. §§ 310.3(a) and (c) and 310.4.

II.

Records Keeping Requirements

Defendants are perpetually required to maintain the following information for a period of 24 months from the date the record is produced:

- (1) all substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) the name and last known address of each customer, the goods or services purchased, the goods or services shipped, the date such goods or services were purchased or

shipped, the amount paid by the customer for the goods or services, invoices, and collection notices or letters; and

(3) the name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee.

III. Automatic Refund or Credit

Defendants are required to provide automatic credit or a full refund of all monies paid for supplies sold by defendants upon the customer's request. Defendants agree that telemarketing practices will not be used to coerce customers to accept less than full credit or refund for goods received which are defective. Additionally, defendants agree that no restocking fees will be charged to customers for any supplies which are sent to the customer by the defendants without the customers knowledge or consent.

IV. Payment to the State of Indiana

The Defendants have paid the amount of Three Thousand Dollars (\$3,000.00) to the Indiana Office of Attorney General as payment for the reasonable attorney fees and costs in this matter.

V.

Notice Requirement

Upon the first and second anniversary of the entry of this Final Judgment and Consent Decree, defendant Laura G. Perry shall provide to the Office of the Indiana Attorney General a sworn statement with the following information: (i) the address of her current residence and that

of any business in which she is a principle officer; and (ii) the names and addresses of her current and former employees, along with a statement of her duties and business activities as well as those of her employees.

VI.

Distribution of Final Judgment and Consent Decree

Defendants shall provide a copy of this Final Judgment and Consent Decree to each officer or director, manager and all sales personnel, present and future, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining such persons, for any business activity which engages in the sale, offering for sale, advertising, or promoting of any product or service by any means to any consumer of such product or service. Defendants each shall obtain a signed and dated acknowledgment of receipt of the copy of this Final Judgment and Consent Decree which has been provided pursuant to the terms set forth above.

VII.

Effect of Order

This Final Judgment and Consent Decree finally resolves all claims plaintiff may have against the defendants for any acts and practices alleged in the complaint which predate the entry of this Final Judgment and Consent Decree, and acts as a merger of all such actual or potential claims therein and a bar to all future prosecution of such claims now or heretofore made. It shall not, however, be construed to limit the remedies available to the plaintiff in connection with any future violation of Indiana or federal law by defendants which are not specifically addressed herein. Nor shall this Final Judgment and Consent Decree be construed to resolve or preclude

any other action, civil, criminal, administrative, or to affect the rights of any private party to pursue any remedy or remedies pursuant to the laws of the State of Indiana.

VIII.

Parties Subject to Order

This Final Judgment and Consent Decree shall apply to and bind each defendant in this matter, whether acting through principals, officers, directors, agents, servants, employees, subsidiaries, successors, assigns, or acting through any corporation or other business entity whose acts, practices, or policies are directed, formulated or controlled by any of the defendants.

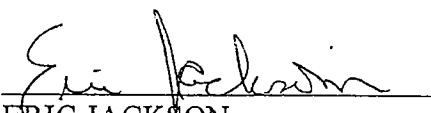
IX.

Effective Date of Order

This Final Judgment and Consent Decree shall take effect immediately upon its signing by the parties and its entry by the Court.

APPROVED:

PLAINTIFF, STATE OF INDIANA
by KAREN M. FREEMAN-WILSON,
Attorney General of Indiana

By: 
ERIC JACKSON
Deputy Attorney General
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Indianapolis, IN 46204
(317) 233-3987

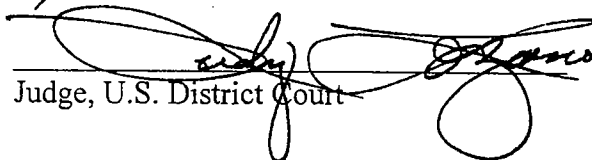
DEFENDANTS, NATIONAL
MAINTENANCE PRODUCTS, INC.,
RELIABLE MAINTENANCE INC.,
LAURA G. PERRY, and JAMES NICHOLS.

By: 
LAURA G. PERRY, President

By: 
LAURA G. PERRY, individually

By: 
JAMES NICHOLS, individually

Date Entered: 2/1/2001


Judge, U.S. District Court

Case: 2:99-cv-00046

Eric L Jackson, Esq.
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Indianapolis, IN 46220
